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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,598	11/12/2005	Moti Harel	026086.095-35US	6923
24239 7590 01/14/2010 MOORE & VAN ALLEN PLLC P.O. BOX 13706 Research Triangle Park, NC 27709				
EXAMINER				
HUANG, GIGI GEORGIANA				
ART UNIT		PAPER NUMBER		
1612				
MAIL DATE		DELIVERY MODE		
01/14/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# **Advisory Action** **Before the Filing of an Appeal Brief**

## **Application No.**

10/530,598

## **Applicant(s)**

HAREL ET AL.

## **Examiner**

GIGI HUANG

## **Art Unit**

1612

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 29 December 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## **NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

## **AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
b) ☐ They raise the issue of new matter (see NOTE below);  
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 60-72.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

## **AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

## **REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Zohreh A Fay/  
Primary Examiner, Art Unit 1612

Continuation of 3. NOTE: The new amendments to the claims require a new search and consideration.

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's argument for the 112 rejection is directed to the newly amended claims which are not entered. In regards to Sugimoto in view of Borror in view of Gladue, Applicant's arguments are directed to Sugimoto asserting that it does not teach the higher level of carotenoid of at least 1% by weight of the composition as Sugimoto teaches a preferred range of 3 mg-100mg/100g feed which equals 0.003% to 0.1% carotenoid. This is not persuasive because while the range of 0.003% to 0.1% carotenoid is preferred, the teachings of Sugimoto are not held solely to the preferred embodiment when the general teaching of Sugimoto is for the carotenoid to be at least 0.003% carotenoid which includes the range of at least 1% carotenoid. In regards to Applicant's reference to Ex parte Whalen, it is not persuasive as the case conditions and art (the case is directed to catheters and polymers) are not comparable. As the general teaching of Sugimoto teaches that at least 0.003% of carotenoid is present in the composition it would be obvious to adjust the amount of carotenoid within the taught range to attain the range of at least 1% carotenoid. The Borror and Gladue references provide the specific substitutions for analogous sources for phospholipids and motivation to the inclusion of DHA with sources and extraction wherein the substitution is still obviated. Applicant's arguments are not persuasive to these references as the arguments are directed to sections of Borror that are not utilized in the rejection as only a specific area of Borror was merely used to show the known analogous sources of phospholipids in the art as addressed in the previous action, and arguments to Gladue recite cases wherein the art and conditions of the cases are not the same nor comparable to be reflective of the instant application. In regards to arguments of unexpected results, the results are not unexpected as addressed in the previous action. The rejections are maintained.